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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,076	02/15/2002	John R. Hare	POU920020016US1	6860

7590

09/15/2005

LAWRENCE D. CUTTER, Attorney  
IBM Corporation, Intellectual Property Law Dept.  
2455 South Rd., M/S P386  
Poughkeepsie, NY 12601

EXAMINER

REFAI, RAMSEY

ART UNIT

PAPER NUMBER

2152

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/078,076

Applicant(s)

HARE ET AL.

Examiner

Ramsey Refai

Art Unit

2152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. Response to Amendment received on July 7, 2005. Claims 1, 2, and 5 have been amended. Claims 1-5 remain pending examination.

***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 5 recites the limitation "medium" in line 1. The specification fails to provide proper antecedent basis for this claim.

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 5 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to program code on a computer-readable *medium*. The term "medium" has multiple definitions and can include signals. Since the specification fails to define "medium" as a *tangible* medium, the claims are rendered non-statutory.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4, and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 4, and 5:

The claims are directed to a second message, but it is not clear what is sending this second message and where this second message is sent.

Also, it is not clear how "locally stored group membership information" would be used to determine "indicia of occurrence of said quick restart". There seems to be no clear relation between the two limitations.

Furthermore, claims recite the limitations "the sender's membership group" and "the group". There is insufficient antecedent basis for these limitations in the claims.

### *Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Sreenivasan et al (U.S. Patent Publication No. 2002/0049845).

8. As per claim 1, Sreenivasan et al teach a method for detecting the quick restart of liveness daemons in a distributed, multinode data processing system in which nodes communicate liveness indicia in the form of heartbeat signals via adapters coupled to each node, said method comprising the steps of:

sending, from a first node to other nodes that are not in the sender's membership group, a first message which includes at least indicia of occurrence of a quick restart (**paragraph [109]**); and

determining, from said indicia of occurrence of said quick restart and from locally stored group membership information, the existence of a quick restart at said first node, and responding thereto by sending a second message which indicates that said first node is to be expelled from the group (**paragraphs [109, 073]**).

9. As per claim 2, Sreenivasan et al teach a second message is sent by the node that is next in line for receipt of heartbeat signals, with respect to the node that sent the first message (**paragraphs [073, 078, 082, 089-097]**).

10. As per claim 3, Sreenivasan et al teach said quick restart indicia are selected from the group consisting of: (1) an indication that sender and receiver are not in the same adapter membership group; (2) an indication that the sender's address is part of the current adapter membership group according to said receiver; and (3) an indication of difference in instantiation number for the sender's adapter (**paragraphs [073, 078, 082, 089-097]**).

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11. As per claims 4-5, these claims have similar limitations as claim 1 above, therefore are rejected under the same rationale.

***Response to Arguments***


12. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey Refai whose telephone number is (571) 272-3975. The examiner can normally be reached on M-F 8:30 - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
September 9, 2005

  
JOHN FOLLANSBEE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

Ramsey Refai  
Examiner  
Art Unit 2152